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Attorneys for Defendant Simon & Schuster, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
AT PORTLAND

LEYAH JENSEN,

PLAINTIFF,

v.

SIMON & SCHUSTER, INC.,

DEFENDANT.

Case No. 03:12-cv-00759-PK

**DECLARATION OF ERIC SEMEL IN
SUPPORT OF DEFENDANT SIMON &
SCHUSTER, INC.'S MOTION TO
DISMISS PURSUANT TO FRCP
12(b)(6) OR IN THE ALTERNATIVE
TRANSFER VENUE PURSUANT TO
28 U.S.C. § 1404**

I, Eric Semel, declare as follows:

1. I am a Human Resources Director for defendant Simon & Schuster. I make this Declaration in support of Defendant's Motion to Dismiss Pursuant to FRCP 12(b)(6) or In the Alternative Transfer Venue Pursuant to 28 U.S.C. § 1404. This Declaration is based on my personal knowledge.

2. Attached hereto as Exhibit 1 is the right-to-sue letter Simon & Schuster received from the Equal Employment Opportunity Commission on December 16, 2011.

3. Plaintiff was employed by Simon & Schuster in New York, New York.

Page 1 – **DECLARATION OF ERIC SEMEL IN SUPPORT OF DEF.'S MOTION TO DISMISS**

DWT 20289598v1 3901014-000663

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Portland, Oregon 97201-5610
(503) 241-2300 main • (503) 778-5299 fax

4. Plaintiff's former supervisor (Executive Art Director), Department Head (Vice President, Director), and the Human Resources Director who worked with plaintiff, as well as most or all of plaintiff's former team members, are all employed by Simon & Schuster in New York and reside in the New York area.

5. Plaintiff's employment file and other documents potentially relevant to plaintiff's claims are all located in New York.

6. Simon & Schuster has no offices or employees in Oregon.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct, and that this Declaration was executed on this 6th day of September, 2012 at New York, New York.



ERIC SEMEL



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
New York District Office

33 Whitehall Street, 5th Floor
New York, NY 10004-2112
For General Information: (800) 669-4000
TTY: (800)-669-6820
District Office: (212) 336-3620
General FAX: (212) 336-3625

Leyah Jensen
148 West 111th St., Apt. 2d
New York, NY 10026

Re: EEOC Charge No. 551-2011-00911
Leyah Jensen v. Simon & Schuster

Dear Ms. Jensen:

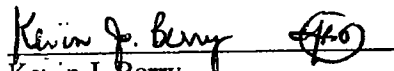
This office is in receipt of your request for a *Notice of Right to Sue* on the above-referenced charge.

Ordinarily, a charging party or his/her counsel is not entitled to receive a *Notice of Right to Sue* upon request until the charge has been pending with the EEOC for at least 180 days. However, an early *Notice of Right to Sue* is authorized by 29 C.F.R. § 1601.28(a)(2) if the Director determines that the Commission will not be able to complete its administrative process within 180 days of the date the charge was filed.

After reviewing the circumstances of this charge, we have determined that issuing you the requested Notice of Right to Sue is warranted at this time, given our current workload and the extent of the additional information required to complete this investigation.

If you have any questions, please call Roxanne Zygmund, Investigator at (212) 336-3764.

Sincerely,


Kevin J. Berry
District Director

12-14-2011
Date

cc:
Eric Semel, Director of Human Resources
Simon & Schuster
1230 Avenue of the Americas
New York, NY 10020

File

EEOC Form 161-B (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: **Leyah Jensen**
148 W. 111th St., Apt. 2d
New York, NY 10026

From: **New York District Office**
33 Whitehall Street
5th Floor
New York, NY 10004



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

551-2011-00911

Roxanne Zygmund,
Investigator

(212) 336-3764

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice;** or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)



More than 180 days have passed since the filing of this charge.



Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.



The EEOC is terminating its processing of this charge.



The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:



The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice.** Otherwise, your right to sue based on the above-numbered charge will be lost.




The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

Kevin J. Berry 
Kevin J. Berry,
District Director

12-14-2011

(Date Mailed)

Enclosures(s)

cc: **Eric Semel, Director of Human Resources**
SIMON & SCHUSTER
1230 - 6th Avenue
New York, NY 10020

ENCLOSURE WITH EEOC
Form 181-B (11/09)

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court under Federal law.
If you also plan to sue claiming violations of State law, please be aware that time limits and other
provisions of State law may be shorter or more limited than those described below.)*

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge within 90 days of the date you receive this Notice. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was mailed to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit **before 7/1/10 -- not 12/1/10** -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.